

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Matagorda, Texas

) MB Docket No. 04-215

) RM-10993

To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

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COMMENTS AND COUNTERPROPOSAL

Federal Communications Commission
Office of the Secretary

Respectfully submitted,

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S U M M A R Y

On June 10, 2004, the Commission released a Notice of Proposed Rulemaking to amend the FM table of Allocations to add a new channel 252A to Matagorda, Texas. In the attached Counterproposal, Fort Bend Broadcasting Company, licensee of radio station KULF(FM) in Brenham, Texas, proposes to relocate that station to operate on a higher channel in Bellville, Texas, and to make certain other changes consistent with that proposal. Additional public interest benefits that would be achieved by adoption of this counterproposal would include a first reception service to be provided to a new area by a relocated station KTXM(FM) in Hallettsville, Texas, and replacement of a grandfathered class A channel in Columbus occupied by KULM(FM) with a fully spaced channel there. Although the Fort bend counterproposal is mutually exclusive with the proposal in the Notice of Proposed Rulemaking to allocate new channel 252A to Matagorda, Fort Bend has also found a replacement channel there (235A) which could also be assigned to Matagorda should the Commission wish to do so. Fort Bend has committed to reimburse all licensees making any change in channel and/or transmitter site as requested herein and has committed to apply for, build, and operate the upgraded relocated channel for KULF(FM) in Bellville if the counterproposal is approved by the Commission. It is submitted that the counterproposal is consistent with all FCC Rules and Policies and that adoption of the Counterproposal would be in the public interest.

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To: Assistant Chief, Audio Division
Office of Broadcast License Policy
Media Bureau

COMMENTS AND COUNTERPROPOSAL

Fort Bend Broadcasting Company (hereinafter "Fort Bend"), licensee of radio station KULF(FM) in Brenham, Texas, (facility No. 40775) pursuant to Sections 1.415 and 1.420 of the Commission's Rules hereby files the instant Comments and Counterproposal in response to the Notice of Proposed Rulemaking ("NPR") issued in the above-captioned proceeding as released June 10, 2004, (DA 04-1539).

I. PRELIMINARY STATEMENT

The essential purpose of this counterproposal is to upgrade and relocate channel 231C2, currently licensed as KULF(FM) to Brenham, Texas, to channel 231C1 at a new city of license of Bellville, Texas. In doing this, it would not only provide a first FM radio service to Bellville ^{1/}, but in the process, also

^{1/} It might actually be a first radio service of any kind since KNUZ(AM), the daytime-only AM station currently licensed to Bellville (facility No. 48653), has filed an application to leave Bellville and relocate to KATY, Texas (BMPJ-20040128AHL).

include a first new reception service to persons located in a presently unserved "white area" who would receive that new first reception service from a necessary relocation of transmitter site for KTXM in Hallettsville.

To accomplish the upgrade and relocation of KULF, it will be necessary to incorporate channel changes and some relocation of transmitter sites of various operating stations. Fort Bend has secured the prior consent of all stations that require modification of transmitter site and all those for whom a channel change is proposed (See Exhibit A) except for two stations for which prior consent has not been obtained, those being KQXY(FM) licensed to Cumulus Licensing LLC, operating on channel 231C1 in Beaumont, Texas, and KKMV(FM), licensed to Capstar TX Limited Partnership, operating on channel 283C1 in Orange, Texas. In each case, fully equivalent channels have been proposed herein to operate at their existing transmitter sites, including the new "applied for" site by KQXY(FM) in its pending application BPH-20031119AAE.

It is therefore submitted that this proposal is in full compliance with all Commission rules and policies applicable to involuntary channel changes as set forth in Columbus, Central City et. al., 59 RR 2d 1184 (1986); Castle Rock Colorado, et. al. 8 FCC Rcd 4475 (1993); and Farmersville, Texas et. al., 12 FCC Rcd 4099 (1997); Recon Dismissed 12 FCC Rcd 12056 (1997).

Fort Bend also commits here to reimburse all licensees, both those with prior consent as well as those without prior consent,

for all reasonable and prudent expenses incurred in the change of channel and/or transmitter locations as set forth herein.

In addition, it is noted that in any case where it has been proposed to relocate an existing station, it has also been proposed to replace that facility with another existing station. In no case has any vacant "backfill" channel been proposed, and the instant proposal is fully consistent with the Commission's current "backfill policy" as set forth in Pacific Broadcasting of Missouri, 18 FCC Rcd 2291 (2003), recon denied, Memorandum Opinion and Order, ___FCC Rcd___, FCC 04-140 (2004).

Finally, it is noted that although this Counterproposal is mutually exclusive with the Notice of Proposed Rulemaking as issued in this case to allocate channel 252A to Matagorda, Fort Bend's consulting Engineer has found an alternate channel 235A which would work in Matagorda as part of the Fort Bend Counterproposal 2/ and for the Commission's consideration and use, it has been included here.

In sum, it is submitted that Bellville is deserving of its first fulltime local radio service and that providing that new upgraded service along with the provision of a new first reception service to existing "white area" by the proposed

2/ It is noted that the Matagorda proponent has been required by the Commission to provide factual data sufficient to demonstrate qualification of Matagorda as a "community" for allocation purposes and Fort Bend takes no position on that, only noting that if the Commission is satisfied on that point, that channel 235A could then be allocated to Matagorda.

relocation of antenna site for KTXM in Hallettsville are both changes that are clearly in the public interest. To the extent that all proposed changes are totally consistent with all FCC Rules and Policies, it is submitted that adoption of this Counterproposal would be in the public interest.

This request is fully supported by the attached Engineering Statement (Exhibit C) which definitively describes every element of the proposed changes requested herein and demonstrates in each instance, their full and complete compliance with all applicable FCC Rules and policies. It is also noted that in relocating from its present community of license in Brenham, that Brenham would continue to receive full local service from KTTX(FM) as presently licensed to Thomas Whitehead, Inc., operating on channel 291C2, and licensed to Brenham, and from fulltime AM station KWHI(AM) also licensed to Thomas Whitehead, Inc., in Brenham.

II. THE RULEMAKING PROPOSAL

A. RELOCATION OF KULF(FM) TO BELLVILLE, TEXAS

As noted, a daytime-only AM radio station is already licensed to Bellville which is clearly much more than a community for allocation purposes. Bellville is located 60 miles west of Houston, and was founded in 1848. It was then incorporated in 1927 and has a current population near 4000 persons (2000 Census figure of 3,794) and is the county seat of Austin County (population 23,590 persons). Bellville has its own local school district and High School, The Blinn College of Small Business, city library, post office, weekly newspaper and a number of

businesses, merchants and industry (see Exhibit B). It has its own aldermanic form of government and provides city-owned and operated utilities to its residents. It also has its own Chamber of Commerce with 254 members. It has thirteen hotels, fourteen retail stores, twenty service establishments, three banks, seven churches, fourteen restaurants and two golf courses. It has its own hospital, and its own airport and its own website (www.bellville.com). In short, it is a substantial community and center of commerce in this part of Texas.

As described in the attached Engineering Exhibit (Exhibit C), station KULF can be moved from Brenham to Bellville and upgraded in class from a C2 to a C1 consistent with all FCC rules and policies and the other channel and transmitter site modifications as proposed herein.

Since this proposed change in allotment could not be completed without use of the licensee's present assignment it is submitted that it is consistent with Section 1.420(i) of the Commission's rules and should be protected as such, as would all other existing licensee channel changes proposed herein. It is therefore requested that upon approval of the requested reallocation, the existing license of KULF(FM) be modified to specify operation on the upgraded channel 231C1 in the new community of Bellville, Texas, and upon such approval, Fort Bend herewith states its full and complete commitment to apply for, build, and operate that new station on Channel 231C1 in Bellville.

**B. The Other Required Changes in Channel and/or
Transmitter Location With Prior Consent**

1. The Channel & Site Change at Ganado, Texas.

The replacement channel for KZAM(FM) in Ganado is one classification below the existing channel (241C3 for 284C2) and will operate from a different site location. The attached Engineering Statement compares the different coverage areas and any change in population coverage and also demonstrates the extent of existing radio reception service already serving Ganado. As such, it is submitted that the change in channel and site will have minimal impact upon the community. Further, upon approval of the Fort Bend counterproposal, Fort Bend Broadcasting Company, licensee of KZAM, has committed (Exhibit A) to file an application to construct a station on that new channel at the new site and to build and operate that new station upon approval of its application by the FCC.

2. The Channel & Site Change at Edna, Texas.

The replacement channel for KGUL(FM) in Edna is equivalent in class for the existing channel (259C3 for 241C3) but will operate from a new site location fully consistent with required coverage rules for Edna. The attached Engineering Statement compares the different coverage areas and any change in population coverage and also demonstrates the extent of existing radio reception service already serving Edna. As such, it is submitted that the change in channel and site will have no measurable impact upon the community. Further, upon approval of

the Fort Bend counterproposal, LaGrange Broadcasting Corporation, licensee of KGUL, has committed (Exhibit A) to file an application to construct a station on that new channel at the new site and to build and operate that new station upon approval of its application by the FCC.

3. The Channel & Site Change at Point Comfort, Texas.

The replacement channel for KAJI(FM) in Point Comfort is one classification above the existing channel (284C2 for 231C3) and will operate from a different site location. The attached Engineering Statement compares the different coverage areas and any change in population coverage and also demonstrates the extent of existing radio reception service already serving Point Comfort. As such, it is submitted that the channel upgrade from a C3 to a C2 will have a positive overall impact upon the coverage of the community. Further, upon approval of the Fort Bend counterproposal, Fort Bend Broadcasting Company, licensee of KAJI, has committed (Exhibit A) to file an application to construct a station on that new channel at the new site and to build and operate that new station upon approval of its application by the FCC.

4. The Channel & Site Change at Palacios, Texas.

The replacement channel for KROY(FM) in Palacios is one classification below the existing channel (252C3 for 259C2) and will operate from a different site location. The attached Engineering Statement compares the different coverage areas and

any change in population coverage and also demonstrates the extent of existing radio reception service already serving Palacios. As such, it is submitted that the change in channel and site will have minimal impact upon the community. Further, upon approval of the Fort Bend counterproposal, Fort Bend Broadcasting Company, licensee of KROY, has committed (Exhibit A) to file an application to construct a station on that new channel at the new site and to build and operate that new station upon approval of its application by the FCC.

5. The Channel & Site Change at Columbus, Texas.

The replacement channel for KULM(FM) in Columbus is equivalent in class for the existing channel (283A for 252A) but will replace a grandfathered short-spaced Class A channel with a fully-spaced Class A channel which will operate from a new site location fully consistent with required coverage rules for Columbus. The attached Engineering Statement compares the different coverage areas and any change in population coverage and also demonstrates the extent of existing radio reception service already serving Columbus. As such, it is submitted that the more powerful fully-spaced replacement channel will have a significant positive impact upon the community. Further, upon approval of the Fort Bend counterproposal, Roy E. Henderson, licensee of KULM, has committed (Exhibit A) to file an application to construct a station on that new channel at the new site and to build and operate that new station upon approval of its application by the FCC.

6. The Channel Change at Cameron, Texas.

The replacement channel for KNVR(FM) in Cameron is one classification above the existing channel (286C3 for 232A) and will operate from its existing site location. The attached Engineering Statement compares the different coverage areas and any change in population coverage and also demonstrates the extent of existing radio reception service already serving Point Comfort. As such, it is submitted that the channel upgrade from an A to a C3 will have a positive overall impact upon the coverage of the community. In addition, it is further noted here that this channel change is identical to the channel change/upgrade as already directly requested by Cameron Broadcasting Company and as granted by the Commission by action July 22, 2004, granting BPH-19981202IA, FCC Public Notice Report No. 45785. Cameron Broadcasting Company, licensee of KNVR, has, in Exhibit A, submitted its verification of the grant to change to channel 286C3, its full support of the instant proposal, and its present intention and commitment to proceed diligently in construction and operation of its station upon the newly authorized channel, as also proposed herein.

7. The Site Change at Hallettsville, Texas.

As fully described in the attached Engineering Statement, assignment of 259C3 to Edna, Texas, requires a change in antenna site location for station KTXM(FM) in Hallettsville, Texas. It is noted that this site change will not only accommodate the channel

change at Edna, but will also result in providing a first reception service by KTXM to an existing white area which is located to the northwest of Hallettsville. The attached Engineering Statement describes the change in coverage area which would result from the KTXM site change, including a full description of the new white area which would receive its first reception service.

It is submitted that the gains resulting from this change at KTXM would serve the highest priority considered in allocation proceedings (a first reception service) and, as such, provides a further independent public interest basis for adoption of the Fort Bend proposal. LaGrange Broadcasting Corporation, licensee of KTXM has committed and agreed (Exhibit A) that upon approval of the Fort Bend counterproposal, it will promptly file an application for minor modification of license to make the change in site location as set forth herein, and upon approval of that application, to diligently construct and operate KTXM at that new site.

**C. Two Required Changes in Channel
Without Prior Consent**

1. Change of Channel at Beaumont, Texas

As fully set forth and described in the attached Engineering Statement (Exhibit C), in order to implement the changes set forth in this counterproposal it is also necessary to make an equivalent channel change at station KQXY(FM) in Beaumont, Texas, from channel 231C1 to 283C1. As noted, the channel change is

fully equivalent and will work at the existing site for KQXY(FM), as well as at a new site that has been proposed by Cumulus Licensing LLC, the licensee of KQXY(FM) in its application BPH-20031119AAE. As also noted elsewhere, Fort Bend agrees to reimburse Cumulus Licensing LLC as licensee of KQXY(FM) for all of its reasonable and prudent expenses incurred in changing channel from 231C1 to 283C1.

2. Change of Channel at Orange, Texas

As set fully set forth and described in the attached Engineering Statement (Exhibit C), in order to implement the changes set forth in this counterproposal it is also necessary to make an equivalent channel change at station KKMY(FM) in Orange, Texas, from channel 283C1 to 231C1. As noted, the channel change is fully equivalent and will work at the existing site for KKMY. As also noted elsewhere, Fort Bend agrees to reimburse Capstar TX Limited Partnership, the licensee of KKMY(FM) for all of its reasonable and prudent expenses incurred in changing channel from 283C1 to 231C1.

D. Other Considerations

1. Commitment to Reimburse for Proposed Changes

To the extent that some of the channel and transmitter location changes proposed herein are at other stations licensed to Fort Bend, Fort Bend has committed to make those changes and will bear all costs to do so. As for other licensees, including

those who have provided prior consent, as well as those who have not provided prior consent, Fort Bend verifies its commitment here to reimburse all the reasonable and prudent expenses of all those licensees for whom changes in channel and/or changes in transmitter locations have been proposed herein.

2. A Proposed Channel for Matagorda

As noted above, although this counterproposal is in conflict with the channel proposed for Matagorda in the Notice of Proposed Rulemaking, Fort Bend's Engineer has determined that assignment of alternate channel 235A would meet all FCC rules and could be assigned to Matagorda consistent with the Fort Bend counterproposal. We have therefore included this as part of our counterproposal with the understanding that it is not an essential part of our proposal, that we take no position on the question posed by the Commission in its Notice of Proposed Rulemaking as to whether Matagorda meets the Commission's required criteria to be considered as a "community" for allocation purposes, but if it does, we note for the Commission's consideration and determination that channel 235A would work there in place of channel 252A as proposed in the NPR.

III. SUMMARY

In sum, it is respectfully requested that the Commission amend the FM table of Allotments as follows:

City	Present	Proposed
Bellville, Texas	-	231C1
Brenham, Texas	231C2, 291C2	291C2
Ganado, Texas	284C2	241C3
Edna, Texas	241C3	259C3
Point Comfort, Texas	231C3	284C2
Palacios, Texas	259C2	252C3
Columbus, Texas	252A(-)	283A
Cameron, Texas	280C2, 232A*	280C2, 286C3
Beaumont, Texas	231C1, 236C, 248C 273C2, 300C	283C1, 236C, 248C 273C2, 300C
Orange, Texas	283C1, 291C	231C1, 291C
Matagorda, Texas	252A**	235A

* This channel has already been deleted by FCC action 7-22-2004 (Public Notice Report No. 45785, 7-27-2004), where it also granted a construction permit for the licensee to move to channel 286C3 as requested herein.

** As presently proposed in this proceeding

IV. CONCLUSION

In sum, it is submitted that the instant Counterproposal is clearly superior to the original proposal for Matagorda as set forth in the NPR and preferable to that original proposal since

it will still accommodate a first service for Matagorda as proposed (but on a different equivalent channel) if the Commission comes to the a priori determination that Matagorda qualifies as a "community" to which an FM channel could be allocated, while, at the same time fully accommodating Fort Bend's proposal which will bring a first local FM service to Bellville, Texas, and assuming that the pending application of daytime AM station KNUZ, presently licensed to Bellville but with an application pending to relocate from Bellville to Katy, Texas, is ultimately approved, would effectively provide a first radio broadcast service to Bellville.

In addition, to the extent that, in accommodating the changes proposed herein, Station KTXM, licensed to Hallettsville, Texas, will relocate its transmitter antenna to a new site which will continue to serve Hallettsville but which will also provide a new first reception service to an existing "white area" which presently receives no radio broadcast service at all, it provides even further public interest support for adoption of the Fort Bend counterproposal.

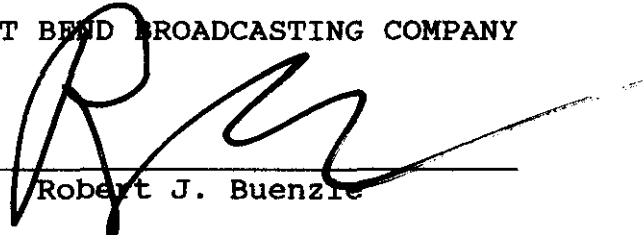
In sum, it is noted that under the Fort Bend counterproposal, no community would lose its existing local service, but one community (Bellville) would receive its first FM service, first fulltime radio service and, with the relocation of its daytime AM station, its first radio broadcast service, and the channel would be upgraded in class providing further service to more people. Moreover, under the Fort Bend proposal, a new

white area would receive its first broadcast reception service from the relocated station in Hallettsville, and a grandfathered short-spaced Class A station in Columbus would be upgraded to a fully spaced Class A station. It is therefore submitted that adoption of the Fort Bend proposal would be in furtherance of the goal of maximization of the most efficient use of the available allocations in the area and providing the public with the greatest amount of overall service, to the maximum number of communities, consistent with the priorities as set forth by the Commission in Revision of FM Assignment Policies and Procedures, 51 P&F RR 807, 810 (1982), and as further set forth in Columbus, Nebraska, et.al., 51 Fed. Reg. 4926, Feb. 10, 1986. For these reasons, it is respectfully submitted that the instant Counterproposal is clearly in the public interest and should be adopted.

Respectfully submitted,

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